

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH MORRIS,

Plaintiff,

v.

LUSH RETAIL,

Defendant.

CASE NO. 3:22-cv-05242-DGE

ORDER DISMISSING CASE
WITHOUT PREJUDICE

On April 28, 2022, Plaintiff filed with the Court a document stating that he “desires to dismiss” his case and requests that “all matters in the above case be dismissed without prejudice.” (Dkt. No. 7.) The Court construes this as a request for voluntary dismissal of Plaintiff’s claim pursuant to Federal Rule of Civil Procedure 41(a)(2). As relevant here, Rule 41(a)(2) provides that:

... an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper ... Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

1 Rule 41(a)(2) allows a plaintiff, “pursuant to an order of the court, and subject to any
2 terms and conditions the court deems proper,” to dismiss an action without prejudice at any time.
3 *Westlands Water Dist. v. United States*, 100 F.3d 94, 96 (9th Cir. 1996) (citing *Stevedoring*
4 *Servs. of Am. v. Armilla Int’l B.V.*, 889 F.2d 919, 921 (9th Cir. 1989)).

5 A district court should grant a motion for voluntary dismissal unless a defendant can
6 show that it will suffer some plain legal prejudice as a result. *Waller v. Fin. Corp. of America*,
7 828 F.2d 579, 583 (9th Cir. 1987). Legal prejudice has been defined as “prejudice to some legal
8 interest, some legal claim, some legal argument.... [u]ncertainty because a dispute remains
9 unresolved is not legal prejudice.” *Westlands*, 100 F.3d at 97. Nor does the expense incurred in
10 defending against a lawsuit amount to legal prejudice. (*Id.*)


11 Further, legal prejudice does not result merely because the defendant will be
12 inconvenienced by having to defend in another forum or where a plaintiff would gain a tactical
13 advantage by that dismissal. *Smith v. Lenches*, 263 F.3d 972, 976 (9th Cir. 2001) (citing
14 *Hamilton v. Firestone Tire & Rubber Co.*, 679 F.2d 143, 145 (9th Cir.1982)).

15 Defendant does not object to Plaintiff’s motion. (Dkt. No. 8.)

16 Accordingly, Plaintiff’s request is GRANTED and this case is DISMISSED without
17 prejudice.

18 Dated this 16th day of May, 2022.

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David G. Estudillo
United States District Judge